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KEVIN L. RUSSELL CHERNOFF, VILHAUER, MCCLLUNG & STENZEL LLP 1600 ODSTOWER 601 SW SECOND AVENUE PORTLAND, OR 97204			EXAMINER	SHANG, ANNAN Q
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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MUHAMMED IBRAHIM SEZAN and PETRUS VAN BEEK

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Appeal 2009-007217  
Application 09/580,808  
Technology Center 2400

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Before JOHN C. MARTIN, JOSEPH F. RUGGIERO, and  
ROBERT E. NAPPI, *Administrative Patent Judges*.

RUGGIERO, *Administrative Patent Judge*.

DECISION ON APPEAL<sup>1</sup>

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

## STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Final Rejection of claims 2, 3, 5-10, 12-79, 89-104, and 108-118, which are all of the pending claims. Claims 1, 4, 11, 27, 80-88, and 105-107 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

Rather than reiterate the arguments of Appellants and the Examiner, reference is made to the Appeal Brief (filed March 10, 2008) and the Answer (mailed June 12, 2008) for the respective details. Only those arguments actually made by Appellants have been considered in this decision. Arguments which Appellants could have made but chose not to make in the Brief have not been considered and are deemed to be waived (*see* 37 C.F.R. § 41.37(c)(1)(vii)).

### *Appellants' Invention*

Appellants' invention relates to providing a viewer at least one of audio, image, and video having a plurality of frames and pictorial content. A preferences description is received that describes a user's preferences with respect to the use of at least one of the audio, image, and video, wherein the preferences description includes multiple attributes. (*See generally* Spec. 2:18-25).

Claim 61 is illustrative of the invention and reads as follows:

61. A storage medium selectively detachably insertable into a recording device suitable to record at least one of an audio and a video comprising a plurality of frames, said storage medium storing information comprising:

- (a) a preferences description, describing preferences of a user with respect to the use of said at least one of said audio and video, where said description includes multiple attributes; and
- (b) a time attribute of said preferences description describing at least one of:
  - (i) a first time to start obtaining said at least one of audio and video prior to the scheduled time of said at least one of audio and video; and
  - (ii) a second time to end obtaining said at least one of audio and video after the schedule time of said at least one of audio and video; and
- (c) wherein said storage medium interacts with said recording device when inserted in said storage medium to obtain said at least one of an audio and a video.

*The Examiner's Rejections*

The Examiner relies on the following prior art references to show unpatentability:

Osawa	US 5,956,037	Sep. 21, 1999
O'Brien	US 6,055,569	Apr. 25, 2000
Tracton	US 6,470,378 B1	Oct. 22, 2002 (filed Mar. 31, 1999)
Vetro	US 6,542,546 B1	Apr. 1, 2003 (filed Feb. 2, 2000)
Sahai	US 6,594,699 B1	Jul. 15, 2003 (filed Oct. 10, 1997)
Maissel	US 6,637,029 B1	Oct. 21, 2003 (filed Jun. 10, 1999)

Herrington US 6,865,746 B1 Mar. 8, 2005  
(filed Nov. 30, 1999)

Claims 61-70 and 72 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Maissel.

Claims 71 and 108-118 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Maissel in view of Herrington.

Claims 73-79 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Maissel in view of O'Brien.

Claims 2, 3, 5-9, 12-19, 21-25, 28, 29, 38-46, 48-54, 56, and 104 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sahai in view of Vetro.

Claims 20, 30, 47, 55, and 57-60 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sahai in view of Vetro and Tracton.

Claims 94-103 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sahai in view of Osawa.

Claims 10 and 26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sahai in view of Vetro and further in view of Osawa.

Claims 31-37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sahai in view of Osawa and further in view of Vetro.

Claims 89-93 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sahai in view of Vetro and O'Brien.

## ANALYSIS

35 U.S.C. § 102(e) REJECTION

Appellants' arguments focus on the contention that, in contrast to the invention set forth in independent claim 61, the Maissel reference has no

disclosure of the inserting of a detachable storage medium in which user preferences are stored into a *recording* device, nor any interaction of the storage medium with the *recording* device. According to Appellants (App. Br. 11), while Maissel discloses the insertion of a portable storage media into a set top box 110, there is no indication in Maissel that set top box 110 is a recording device (col. 10, ll. 31-37). Further, Appellants point to Maissel's disclosure that a user of the set top box 110 may have a stand-alone VCR or other recording device, but that these devices are not disclosed as having any interaction with set top box 110 (col. 10, ll. 49-52).

We do not agree with Appellants. As discussed by the Examiner (Ans. 27), Maissel discloses that the “‘apparatus’ of fig. 1 comprises an interface unit 110” also known as a set top box, and that this interface unit 110 further comprises a receiving unit 120, an intelligent agent 130, and a profile storage unit 140 (Fig. 1; col. 10, ll. 22-49). Again, referring to the “apparatus of FIG. 1,” Maissel discloses that such apparatus may also “comprise a recording device” such as a VCR, DVCR, or DVD (col. 10, ll. 49-53). Further, contrary to Appellants’ contention (App. Br. 11), nowhere does Maissel indicate that the VCR or the other recording devices are stand-alone devices, as pointed out by the Examiner (Ans. 27). We also agree with the Examiner (Ans. 28) that Maissel provides for the obtaining of audio and video material prior to and after the scheduled time of the audio and video program (col. 8, l. 46-col. 9, l. 15).

In view of the above discussion, the Examiner’s 35 U.S.C. § 102(e) rejection of independent claim 61, as well as dependent claims 62-70 and 72 not separately argued by Appellants, is sustained.

35 U.S.C. § 103(a) REJECTIONS

*Claims 71 and 108-118*

We also sustain the Examiner's obviousness rejection, based on the combination of Maissel and Herrington, of independent claim 108, as well as dependent claims 71 and 109-118 not separately argued by Appellants. Appellants' arguments with respect to independent claim 108 contend that Herrington does not overcome the deficiency of Maissel in disclosing the providing of a creation attribute in a user's preference description which describes the creation date of an audio or video program. According to Appellants (App. Br. 12-13), while Herrington discloses a program guide which enables a user to locate programs having various attributes including a creation attribute in the form of a common production year, any such attributes are included in the program description scheme, and are not included in a user description scheme as claimed.

We do not find Appellants' arguments persuasive of any error in the Examiner's stated position. We agree with the Examiner (Ans. 28-29) that Herrington discloses providing a user the ability to search through program listings according to user preferences for attributes such as actors, directors, categories and, in particular, production year, i.e., creation date, as claimed (col. 6, ll. 17-38, col. 7, ll. 38-53, and col. 10, ll. 15-28). Further, we fail to see why Herrington's disclosure of providing a user with an opportunity to save the list of attributes used as search parameters for future use would not be considered by an ordinarily skilled artisan as part of a user's preference description (col. 1, l. 57-col. 2, l. 13).

*Claims 2, 3, 5-9, 12-19, 21-25, 28, 29, 38-46, 48-54, 56, and 104*

With respect to the Examiner's rejection of independent claims 2, 21, 38, 49, and 104 based on the combination of Sahai and Vetro, Appellants initially contend (App. Br. 16) that Sahai fails to disclose a media attribute having first and second qualities of encoding but, rather, merely permits a user to pick a selected encoding quality. We agree with the Examiner, however, that ample evidence exists within the disclosure of Sahai to support the Examiner's position. As discussed by the Examiner (Ans. 32-33), Sahai discloses that server 10 stores the user client 12 preferences including the selection among various qualities of encoding such as MPEG1, MPEG2, etc. (col. 3, ll. 23-60 and col. 4, ll. 9-31).

We also find unpersuasive Appellants' argument that Vetro does not overcome the deficiency of Sahai of failing to disclose that the user selected preference of encoding quality is based on the semantic content of the audio or video presentations. Appellants do not dispute that Vetro discloses the selection of encoding quality based on the semantic content, i.e., words, sounds, scenes, etc., of audio and video presentations (col. 4, ll. 37-47). With respect to independent claim 21, Appellants also do not challenge the Examiner's position (Ans. 13 and 34) that it is known to include actors, stars, director, etc. as part of the semantic content upon which encoding quality is based. Appellants contend (App. Br. 16-19), however, that Vetro discloses the automatic selection or adjusting of bit rates based on audio or video presentation content by a content-network device (CND) manager 330, irrespective of any user-specified preference criteria as claimed.

We find, however, that to whatever extent Appellants may be correct that Vetro's semantic content encoding quality teaching is based on

automatic selection by a system device, the teaching of including encoding quality in user selected preferences is provided by Sahai. Similarly, while Appellants further contend (App. Br. 19-20), with respect to independent claim 104, that Vetro has no teaching of encoding choices related to video formats, this teaching is provided by Sahai. In our view, an ordinarily skilled artisan would have recognized and appreciated that the inclusion of semantic content based encoding quality criteria as taught by Vetro would have served as an obvious enhancement to the user selected quality encoding preferences feature of Sahai.

In view of the above discussion, the Examiner's 35 U.S.C. § 103(a) rejection of independent claims 2, 21, 38, 49, and 104, as well as dependent claims 3, 5-9, 12-19, 22-25, 28, 29, 39-46, 48, 50-54, and 56 not separately argued by Appellants, is sustained.

*Claims 10, 20, 26, 30, 47, 55, and 57-60*

We also sustain the Examiner's obviousness rejection of claims 20, 30, 47, 55, and 57-60 based on the combination of Sahai, Vetro, and Tracton, as well as the obviousness rejection of claims 10 and 26 based on the combination of Sahai, Vetro, and Osawa. We find no error in the Examiner's application of Tracton's teaching of encoding quality selection based on prior quality selections (col. 5, l. 30-col. 6, l. 7) and Osawa's "pause" selection feature (col. 11, l. 30) to the system of Sahai as modified by Vetro. Appellants have provided no separate arguments (App. Br. 16-19) for the patentability of the rejected claims but, rather, rely on the arguments asserted previously against the Examiner's obviousness rejection of claims 2, 3, 5-9, 12-19, 21-25, 28, 29, 38-46, 48-54, 56, and 104, based on the

combination of Sahai and Vetro, which arguments we have found to be unpersuasive for all of the previously discussed reasons.

*Claims 94-103 and 31-37*

The Examiner's obviousness rejections of claims 94-103 based on the combination of Sahai and Osawa, and of claims 31-37 based on the combination of Sahai, Osawa, and Vetro, are also sustained. With respect to claims 94-103, we find no error in the Examiner's finding (Ans. 20 and 36) that Osawa's teaching of using the extracted history of a user's previous viewing of a video presentation to perform the same VCR-like speed control when the video presentation is viewed again corresponds to a user preference as claimed (col. 3, ll. 62-col. 4, l. 24, col. 7, ll. 26-49, and col. 11, ll. 27-63). Although Appellants direct attention (App. Br. 20-21) to the word "speed" in the claims, we agree with the Examiner that an ordinarily skilled artisan would have recognized and appreciated that the use of VCR-like playback controls as disclosed by Osawa would include the ability to select the multiple speeds for playback operations such as fast forward and reverse.

Similarly, with respect to claims 31-37, we find no error in the Examiner's application (Ans. 22-24 and 36-38) of the VCR-like playback control teachings of Osawa which include a "pause" function to the system of Sahai as modified by Vetro. (Osawa, col. 7, ll. 26-34 and col. 11, ll. 27-33). We also refer back to our earlier discussion where we found Appellants' arguments directed to the Examiner's proposed combination of Sahai and Vetro to be unpersuasive.

*Claims 73-79 and 89-93*

We do not sustain the Examiner's rejections of claims 73-79 based on the combination of Maissel and O'Brien, nor of claims 89-93 based on the combination of Sahai, Vetro, and O'Brien. The Examiner has applied the O'Brien reference to address the feature, present in each of the independent claims 73 and 89, of indicating or determining the "*number of layers of supplemental data auxiliary to said at least one of said audio and video....*" (Emphasis added). According to the Examiner (Ans. 7, 8, 24-27, and 29-31), O'Brien discloses a layer attribute of a preferences description which sets limits on the number of layers of web pages of supplemental audio and video data to download by predicting which web pages to download based on a probability weight (col. 3, l. 1-29-col. 4, l. 29 and col. 4, l.29-col. 5, l. 8).

We do not agree with the Examiner. As argued by Appellants (App. Br. 13-16), while O'Brien discloses that a user can limit the caching of web pages to those pages above a threshold based on the probability that a user will select a certain web page, there is no disclosure of any attribute that indicates or determines the *number of layers of supplemental data to be downloaded*.

We agree with Appellants that, at best, O'Brien teaches imposing a limit on the likelihood that a web page with a low probability of user selection will be displayed to a user, but there is no indication or determination of the *number of layers of links or web pages that will need to be loaded before the web page is displayed*. Further, we find no explanation in the Examiner's analysis as to how limiting which web pages to download based on a probability determination corresponds to a layer attribute indicating the *number of layers of supplemental data to be provided*. In

addition, we find nothing in the disclosures of the applied Maissel, Sahai, and Vetro which overcomes the deficiencies of O'Brien.

### CONCLUSION

Based on the analysis above, we conclude that, with respect to the 35 U.S.C. § 102(e) rejection, Appellants have not shown that the Examiner erred in rejecting claims 61-70 and 72. With respect to the obviousness rejection under 35 U.S.C. § 103(a), we conclude that Appellants have not shown that the Examiner erred in rejecting claims 2, 3, 5-9, 10, 12-26, 28-60, 94-104, and 108-118, but have shown that the Examiner erred in rejecting claims 73-79 and 89-93.

### DECISION

The Examiner's decision rejecting claims 61-70 and 72 under 35 U.S.C. § 102(e) and claims 2, 3, 5-9, 10, 12-26, 28-60, 71, 73-79, 89-104, and 108-118 under 35 U.S.C. § 103(a) is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

### AFFIRMED-IN-PART

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